

Attachment A –

Part 3

Page 102	Page 104
<p>1 standing objection, which has been 2 stated to numerous questions, about the 3 relevance of this entire line of 4 questioning and also the foundation of 5 the witness as a percipient witness to 6 testify to these facts.</p> <p>7 It is readily apparent that 8 the work that he did in assisting 9 counsel in developing a proposed 10 stipulation as an expert is in fact the 11 same information that he is testifying 12 to today as a percipient witness, and 13 that in developing that information as a 14 witness in an expert capacity, it is 15 impossible for him to divorce what he 16 learned and developed as an expert and 17 try to then proffer it as percipient 18 testimony here in a deposition where he 19 is supposedly testifying as a fact 20 witness.</p> <p>21 I think we can eliminate the 22 mystery. And what I will do is ask my 23 colleague to mark as Exhibit No. 8 the 24 proposed stipulation which was provided</p>	<p>1 (Above-described document 2 marked as Burke Exhibit 8.) 3 MR. STACK: You can tell me 4 when Exhibit 8 has been marked. 5 THE COURT REPORTER: It has 6 been marked.</p> <p>7 MS. AMRON: And I'm going to 8 object not only to you using this 9 document in this way, but also to the 10 relevance of this line of questioning 11 and the use of the document.</p> <p>12 MR. STACK: Does the witness 13 have a copy of Exhibit No. 8?</p> <p>14 THE COURT REPORTER: Yes.</p> <p>15 THE WITNESS: I do.</p> <p>16 BY MR. STACK:</p> <p>17 Q. I would like to direct your 18 attention to the second page of the 19 document marked as Exhibit No. 8, 20 specifically paragraph 2. There is a 21 table that says "Profile of Exxon Mobil 22 Refining Capacity 1985 to 2003." 23 Did you develop that table 24 which is included in Exhibit No. 8?</p>
Page 103	Page 105
<p>1 to defendant Exxon by the City of New 2 York, setting forth in essence the same 3 information which the witness is now 4 attempting to testify as a fact witness 5 on matters of technical or specialized 6 knowledge.</p> <p>7 So if we can mark that as 8 Exhibit No. 8 and then we can ask some 9 questions about it and proceed forward.</p> <p>10 MS. AMRON: I object to your 11 marking it. I object to you asking 12 questions of the witness about it. It 13 was a document that was sent to you by 14 counsel in an effort to resolve a 15 dispute between the two of us and I 16 think it is inappropriate. We can 17 obviously argue it in front of the 18 Court, and I will have a standing 19 objection to it. I don't think the 20 witness has ever seen this document. 21 You know, I'm not going to object to 22 each question. I will just object now 23 for this entire line of questioning.</p> <p>24 MR. STACK: Understood.</p>	<p>1 MS. AMRON: Object as to 2 relevance and my standing objection.</p> <p>3 A. It looks like the table I 4 put together, yes.</p> <p>5 Q. And with regard to that 6 table, you developed that table based on 7 your review of technical and specialized 8 information compiled concerning national 9 petroleum refining capacity in the 10 United States; am I correct?</p> <p>11 MS. AMRON: I'm going to 12 object again as to relevance. Object as 13 argumentative and repeat my standing 14 objection.</p> <p>15 A. Yeah. This is based on Oil 16 and Gas Journal reported capacities for 17 Exxon Mobil facilities over this time 18 period.</p> <p>19 Q. And with regard to this 20 information, is this information taken 21 from the database that's maintained by 22 your company relative to ranking 23 refiners in the United States?</p> <p>24 A. No.</p>

Page 106	Page 108
<p>1 MS. AMRON: Sorry.</p> <p>2 Objection as to relevance.</p> <p>3 A. No, this came directly from 4 the Oil and Gas Journal, reviewing 5 annual reports.</p> <p>6 Q. And with regard to the 7 years 1985 to 2000, in those years you 8 added together the refining capacity of 9 Exxon Company USA and Mobil Oil and 10 Refining; am I correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And with regard to the 13 information compiled for the years 1985 14 to 2003, did you, as part of your work 15 on this case, make an inquiry to the Oil 16 and Gas Journal to determine how they 17 compiled these statistics?</p> <p>18 MS. AMRON: Objection on 19 relevance grounds and standing 20 objection.</p> <p>21 A. No, I did not contact the 22 Oil and Gas Journal for that.</p> <p>23 Q. Have you ever responded to 24 any survey conducted by the Oil and Gas</p>	<p>1 grounds of relevance with reference to 2 the document and I repeat my standing 3 objection.</p> <p>4 A. I'm sorry, prior to which 5 year?</p> <p>6 Q. Do you know, sir, if prior 7 to 1992 Exxon blended MTBE into any of 8 the grades of gasoline produced at its 9 Benicia, California refinery?</p> <p>10 MS. AMRON: Same objection.</p> <p>11 A. No, I do not.</p> <p>12 Q. With regard to the Torrance 13 refinery operated by Mobil, do you know 14 if the Torrance refinery blended MTBE 15 into any of the grades of gasoline it 16 refined at that location?</p> <p>17 MS. AMRON: Objection on the 18 grounds of vague -- well, vagueness, 19 relevance with respect to the documents, 20 and repeat my standing objection.</p> <p>21 A. No, I do not.</p> <p>22 Q. In the course of your work 23 in California, in a variety of 24 consulting assignments that you have</p>
Page 107	Page 109
<p>1 Journal relative to the refining 2 capacity of any of your clients?</p> <p>3 MS. AMRON: Objection, the 4 grounds of relevance and my standing 5 objection.</p> <p>6 A. No. No, I have not.</p> <p>7 Q. Have you ever had any 8 contact with anyone from the Oil and Gas 9 Journal relative to the manner in which 10 they compile the information published 11 in their annual report concerning 12 refining capacity in the United States?</p> <p>13 MS. AMRON: Objection on the 14 ground of relevance and my standing 15 objection.</p> <p>16 A. No, I have not.</p> <p>17 Q. With regard to the document 18 marked as Exhibit No. 8, I would like to 19 direct your attention to paragraph 20 No. 5. Prior to 1992 do you know if the 21 Benicia refinery operated by Exxon 22 company ever blended MTBE into any grade 23 of gasoline produced at that refinery?</p> <p>24 MS. AMRON: Objection on the</p>	<p>1 had, did you ever learn that Exxon never 2 blended MTBE into any gasoline refined 3 at the Torrance refinery -- pardon me, 4 at the Benicia refinery until an 5 oxygenate was required in 1992?</p> <p>6 A. No. I think that's what I 7 had said earlier, that with the CEC 8 reporting of MTBE blending by refinery, 9 I believe that started right around '92.</p> <p>10 Q. And is it your 11 understanding that prior to 1992 Exxon 12 never blended MTBE into any grade of 13 gasoline at the Benicia refinery?</p> <p>14 MS. AMRON: Objection, 15 mischaracterizes prior testimony.</p> <p>16 A. No, that's not my 17 understanding. I simply don't know if 18 they did or not.</p> <p>19 Q. And likewise with regard to 20 Mobil's refining operation in Torrance, 21 did you ever learn in the course of your 22 consulting assignments in California 23 that Mobil never blended any MTBE into 24 any grades of its gasoline prior to</p>

Page 110	Page 112
<p>1 1992?</p> <p>2 A. Again, I did not know 3 either way, so I did not learn that.</p> <p>4 Q. With regard to gasoline 5 produced at the Torrance refinery, can 6 you describe what the tributary area is 7 that's serviced by Torrance?</p> <p>8 MS. AMRON: Objection, 9 vague.</p> <p>10 A. Could you define the 11 "tributary area"?</p> <p>12 Q. Yes, sir. Do you know what 13 the phrase "tributary area" means in 14 relation to refining distribution?</p> <p>15 A. No. That's a new term to 16 me.</p> <p>17 Q. With regard to the Torrance 18 refinery, do you know what percentage of 19 gasoline that was refined at Torrance 20 went into the proprietary Mobil pipeline 21 system?</p> <p>22 A. No, I do not.</p> <p>23 Q. With regard to the Torrance 24 refinery, do you know what percentage of</p>	<p>1 and reformulated fuels were required to 2 be sold.</p> <p>3 A. No, I do not.</p> <p>4 Q. With regard to the other 5 refiners you referred to, do you know -- 6 the Billings refinery in Billings, 7 Montana, do you know if they ever used 8 MTBE?</p> <p>9 A. No, I do not.</p> <p>10 Q. With regard to the Mobil 11 refinery in Joliet, Illinois, do you 12 know if they ever used MTBE?</p> <p>13 A. I don't.</p> <p>14 Q. Do you know what percentage 15 of the gasoline refined at Paulsboro 16 during the period 1985 to 1997 by Mobil 17 was conventional gasoline, did not 18 contain MTBE?</p> <p>19 A. No, I do not.</p> <p>20 Q. Do you know what grades of 21 gasoline, if any, refined at Paulsboro 22 may have contained MTBE as an octane 23 enhancer?</p> <p>24 MS. AMRON: Object as beyond</p>
<p>1 gasoline refined at Torrance went into 2 the Southwestern Terminal?</p> <p>3 A. No. That information is 4 proprietary. It would not be 5 available. I do not have it.</p> <p>6 Q. Prior to testifying here 7 today, did you review any records from 8 the Kinder Morgan southern California 9 pipeline system so you could tell the 10 jury how much, if any, reformulated 11 gasoline refined at the Mobil Torrance 12 refinery was shipped by Kinder Morgan?</p> <p>13 MS. AMRON: Objection, asked 14 and answered.</p> <p>15 A. I did not.</p> <p>16 Q. With regard to the Mobil 17 Torrance refinery, do you know how it 18 procured MTBE that may have been used to 19 add to oxygenated or reformulated 20 fuels?</p> <p>21 MS. AMRON: Is there a time 22 frame?</p> <p>23 BY MR. STACK:</p> <p>24 Q. At any time when oxygenated</p>	<p>1 the scope of direct.</p> <p>2 A. I don't believe I ever saw 3 information about that, so, no.</p> <p>4 Q. With regard to the 5 Paulsboro refinery, do you know how much 6 reformulated gasoline was refined at 7 that location during the years from 1992 8 to 1997?</p> <p>9 MS. AMRON: Object as beyond 10 the scope of direct.</p> <p>11 A. I do not.</p> <p>12 Q. With regard to the Bayway 13 Refinery in the year 1992-'93, do you 14 know how much reformulated or oxygenated 15 fuel may have been manufactured by Exxon 16 before that refinery was sold to Tosco?</p> <p>17 MS. AMRON: Objection, 18 beyond the scope of direct.</p> <p>19 A. No, I do not know.</p> <p>20 Q. In looking at Exhibit No. 21 8, Exhibit No. 8 includes a paragraph 22 No. 13. And on page 5 there is a 23 chart. Did you prepare the chart which 24 appears on page 5 of Exhibit No. 8</p>
	29 (Pages 110 to 113)

	Page 114	Page 116
1	setting forth the number of branded 2 retail outlets and market share for 3 Exxon Mobil?	1 relevance and repeat my standing 2 objection to this line of testimony or 3 questioning. 4 A. Well, this column is 5 calculated, so it is basically taking 6 the reported total number of retail 7 outlets, which is in the National 8 Petroleum News, and then taking the 9 first column in this table, the Exxon 10 Mobil branded retail outlets, and 11 dividing the Exxon Mobil by -- taking 12 the Exxon Mobil as a percent of the 13 total. So it's a calculated column.
9	A. Yes, I did prepare this.	14 Q. And did you actually 15 conduct the calculations? 16 MS. AMRON: Objection as to 17 relevance and I will repeat my standing 18 objection to this line of questioning. 19 A. I did.
10	Q. And with regard to the 11 column that says "Exxon Mobil Total 12 Number of Branded Retail Outlets," what 13 source of information did you rely on 14 for that?	20 Q. And with respect to the 21 information that is in this table 22 setting forth the number of branded 23 outlets and market share and the table 24 that we looked at previously about Exxon
15	MS. AMRON: Objection as to 16 relevance and my same standing objection 17 to use of this document.	19 data?
18	A. Everything in this table 19 came from the same source. It was the 20 National Petroleum News annual reports.	20 MS. AMRON: Objection as to 21 relevance and my standing objection to 22 use of this document.
21	Q. With regard to this 22 specific data point, being the number of 23 branded retail outlets, do you know how 24 the National Petroleum News gathers that	23 A. Well, they do a survey, but 24 the details of how they do that survey -- I don't have the details.
8	Q. Do you know, Mr. Burke, in 9 conducting the survey if the National 10 Petroleum News directs the survey to 11 Exxon Mobil Corporation or to other 12 parties engaged in the petroleum 13 business?	25 Q. Do you know, Mr. Burke, in 26 conducting the survey if the National 27 Petroleum News directs the survey to 28 Exxon Mobil Corporation or to other 29 parties engaged in the petroleum 30 business?
14	MS. AMRON: Objection as to 15 relevance and repeat my standing 16 objection to this line of questioning.	31 MS. AMRON: Objection as to 32 relevance and I repeat my standing 33 objection to this line of questioning.
17	A. I do not know.	34 A. I was.
18	Q. With regard to the next 19 column, it says "Exxon Stations as a 20 Percentage of Total in the United 21 States." Is that information that you 22 obtained from the National Petroleum 23 News?	35 MR. STACK: I'm told now 36 that we have about a minute left on the 37 tape so we will go off the record and we 38 will allow the videographer to change 39 the tape.
24	MS. AMRON: Objection as to	40 THE VIDEOGRAPHER: We're 41 going off the record. The time is 42 4:16 p.m. This is the end of tape 2 of 43 the deposition of Bruce F. Burke. 44 (Recess.) 45 THE VIDEOGRAPHER: We're 46 back on the record. The time is 47 4:24 p.m. This is the start of tape 3 48 of the deposition of Bruce F. Burke. 49 BY MR. STACK: 50 Q. Mr. Burke, during the break, did you speak to counsel?

Page 118	Page 120
<p>1 A. No.</p> <p>2 Q. With regard to the</p> <p>3 testimony you have given here today, did</p> <p>4 you have any discussions with counsel</p> <p>5 before appearing to testify?</p> <p>6 MS. AMRON: It's a yes or no</p> <p>7 question.</p> <p>8 A. Yes.</p> <p>9 Q. And with regard to your</p> <p>10 appearance here today, before appearing</p> <p>11 to testify, did you meet with counsel to</p> <p>12 discuss your testimony?</p> <p>13 A. I did prior to meeting</p> <p>14 here.</p> <p>15 Q. And who did you meet with?</p> <p>16 A. With, primarily, Susan</p> <p>17 here.</p> <p>18 Q. And was Mr. Campins present</p> <p>19 at any time?</p> <p>20 A. He was.</p> <p>21 Q. And what did you discuss?</p> <p>22 MS. AMRON: I'm going to</p> <p>23 object on the ground of privilege.</p> <p>24 MR. STACK: And what</p>	<p>1 MS. AMRON: About very</p> <p>2 general topics. Anything more than that</p> <p>3 I'm going to object and direct the</p> <p>4 witness not to answer.</p> <p>5 THE WITNESS: Okay. So I</p> <p>6 was asked to talk about Exxon Mobil's</p> <p>7 refining capacity on a national basis;</p> <p>8 to talk about the Exxon Mobil</p> <p>9 refineries, their location around the</p> <p>10 country; to talk, to the extent I could,</p> <p>11 about operations in California of the</p> <p>12 Exxon Mobil refineries. What else? And</p> <p>13 also to talk about the Exxon Mobil</p> <p>14 retail market share. I think that's the</p> <p>15 general areas.</p> <p>16 Q. And what else were you told</p> <p>17 by counsel would be the subject of your</p> <p>18 testimony relative to the Exxon Mobil</p> <p>19 refining capacity?</p> <p>20 MS. AMRON: I'm going to</p> <p>21 object. Bill, if you want to continue</p> <p>22 to go down this line of questioning, I'm</p> <p>23 going to object and direct the witness</p> <p>24 not to answer.</p>
Page 119	Page 121
<p>1 privilege are you asserting?</p> <p>2 MS. AMRON: Attorney-client,</p> <p>3 attorney work product.</p> <p>4 MR. STACK: Okay. Are you</p> <p>5 directing the witness not to answer?</p> <p>6 MS. AMRON: Yes.</p> <p>7 BY MR. STACK:</p> <p>8 Q. With regard to giving</p> <p>9 testimony here today, did you discuss</p> <p>10 with counsel the subjects that you would</p> <p>11 testify to in your direct testimony?</p> <p>12 MS. AMRON: That's also a</p> <p>13 yes or no question.</p> <p>14 A. Yes.</p> <p>15 Q. And what subjects were</p> <p>16 identified as topics that you would be</p> <p>17 asked questions about in your direct</p> <p>18 testimony?</p> <p>19 A. The discussion or to talk</p> <p>20 about the -- I'm sorry.</p> <p>21 MS. AMRON: That's all</p> <p>22 right. You can answer this question</p> <p>23 very generally.</p> <p>24 THE WITNESS: Sure.</p>	<p>1 If you want to go to another</p> <p>2 line of questioning and then we can</p> <p>3 break for a second and we can -- the</p> <p>4 City people can discuss this internally,</p> <p>5 it might move more smoothly.</p> <p>6 MR. STACK: And you are</p> <p>7 objecting and directing him not to</p> <p>8 answer on what basis?</p> <p>9 MS. AMRON: Privilege.</p> <p>10 MR. STACK: Which</p> <p>11 privilege?</p> <p>12 MS. AMRON: He is here as a</p> <p>13 percipient witness. You are asking</p> <p>14 about questions, detailed questions</p> <p>15 about our conversations with him.</p> <p>16 MR. STACK: And the</p> <p>17 privilege that you are asserting is</p> <p>18 which privilege?</p> <p>19 MS. AMRON: I'm not going to</p> <p>20 have this conversation with you on the</p> <p>21 record repeatedly. Do you want --</p> <p>22 MR. STACK: I'm simply</p> <p>23 asking for you to establish the basis of</p> <p>24 your assertion of a privilege. It is</p>

Page 122	Page 124
<p>1 not a conversation. It is just state 2 the basis of the privilege and 3 specifically which privilege it is that 4 you are relying on to direct him not to 5 answer a question.</p> <p>6 MS. AMRON: Work product.</p> <p>7 BY MR. STACK:</p> <p>8 Q. At any point in time, 9 Mr. Burke, have you ever retained Sher 10 Leff as your counsel?</p> <p>11 MS. AMRON: Objection, 12 irrelevant.</p> <p>13 A. As my counsel? No.</p> <p>14 Q. And at any point in time 15 have you ever engaged counsel for the 16 City of New York as your counsel to 17 represent you in this matter?</p> <p>18 MS. AMRON: Objection, 19 irrelevant.</p> <p>20 A. No.</p> <p>21 Q. With regard to the subject 22 of the distribution of petroleum product 23 in California, what else did counsel 24 talk to you about in terms of preparing</p>	<p>1 THE VIDEOGRAPHER: We're 2 going off the record. The time is 3 4:30 p.m. 4 (Recess.)</p> <p>5 THE VIDEOGRAPHER: We're 6 back on the record. The time is 7 4:32 p.m.</p> <p>8 MS. AMRON: Okay.</p> <p>9 Mr. Stack, we're going to take a 10 continuing objection to this line of 11 questioning. As you know, the witness 12 is going out of town for business and 13 will not be available here, so we will 14 let him answer the questions. We will 15 not direct him not to answer the 16 questions and we will leave the issue up 17 to the judge to decide whether all of 18 the answers should be stricken and our 19 objection upheld should the issue become 20 relevant.</p> <p>21 MR. STACK: Okay.</p> <p>22 BY MR. STACK:</p> <p>23 Q. With respect to 24 establishing the refining capacity of</p>
<p>1 to testify here today?</p> <p>2 MS. AMRON: Objection. I'm 3 directing the witness not to answer on 4 the ground of privilege.</p> <p>5 MR. STACK: That would be 6 which privilege?</p> <p>7 MS. AMRON: This is all 8 going to be work product.</p> <p>9 BY MR. STACK:</p> <p>10 Q. With regard to the 11 testimony that you were asked to give 12 about the ranking of Exxon in terms of 13 its share of the U.S. gasoline market, 14 what other information was provided to 15 you by counsel before coming to testify 16 here today in your deposition?</p> <p>17 MS. AMRON: Objection. I'm 18 directing the witness not to answer on 19 the grounds of work product.</p> <p>20 I also want to go off the 21 record a second and talk to Mr. Campins 22 off the record.</p> <p>23 MR. STACK: That's 24 agreeable. Go right ahead.</p>	<p>1 Exxon Mobil, what were you told by 2 counsel as to why you should do that?</p> <p>3 MS. AMRON: I'm going to -- 4 same objection, ground of privilege.</p> <p>5 A. I can't say they told me 6 why to present that.</p> <p>7 Q. Based on your conversations 8 with counsel, what was your 9 understanding of the purpose in 10 compiling the refining capacity of Exxon 11 Mobil and ranking it?</p> <p>12 MS. AMRON: Same objection.</p> <p>13 A. Well, my understanding was 14 that in general the reason for me to be 15 here today was to talk about Exxon 16 Mobil's overall sort of scale of 17 operations on a national basis from a 18 refining capacity point of view.</p> <p>19 Q. And in profiling Exxon 20 Mobil's refining capacity for the years 21 1985 to 2003, were you ever asked to 22 identify what percentage of its refining 23 capacity was engaged in producing 24 gasoline blended with MTBE?</p>
	Page 125

Page 126	Page 128
<p>1 MS. AMRON: Same -- sorry. 2 Same objection and also object on the 3 ground of vagueness. 4 A. No, I was not asked to do 5 that. 6 Q. Do you know with regard to 7 Exxon Mobil how the company ranked in 8 terms of refining capacity relative to 9 its competitors for refining product 10 that was blended with MTBE?</p> <p>11 MS. AMRON: Objection on the 12 ground of vagueness. 13 A. No, I don't because I don't 14 have similar data on the production of 15 reformulated gasoline at the individual 16 refining levels, so the answer is no.</p> <p>17 Q. With regard to Exxon, 18 during the years 1985 to 2000, do you 19 know what percentage of the gasoline 20 consumed in California was refined by 21 Exxon? 22 A. Of the gasoline, no, I do 23 not. 24 Q. With regard to Mobil, for</p>	<p>1 and market is not entirely but largely 2 isolated from the rest of the country. 3 Q. And with regard to the Gulf 4 Coast refineries that you looked at in 5 your reports marked Exhibits 5, 6, and 6 7, is there any gasoline refined at the 7 Gulf Coast facilities in Baton Rouge, 8 Beaumont, Baytown or Chalmette that are 9 shipped to California on a pipeline? 10 A. To my knowledge, no. 11 Q. With regard to your 12 experience in the industry and your 13 knowledge in the industry, are you aware 14 of any instances where refined gasoline 15 product was shipped by Exxon or Mobil 16 from its Gulf Coast facilities to ports 17 in California? 18 A. I don't know specifically. 19 I wouldn't rule it out, but I don't have 20 the -- that specific information. 21 Q. With regard to refiners in 22 California, what company is the largest 23 refiner of gasoline in California? 24 MS. AMRON: Objection, vague</p>
Page 127	Page 129
<p>1 the years 1985 to 2000, do you know what 2 percentage of the gasoline consumed in 3 California was refined by Mobil? 4 A. I do not. 5 Q. With regard to Exxon Mobil, 6 for the years 2000 to 2003, do you know 7 what percentage of the gasoline consumed 8 in California was refined by Exxon 9 Mobil? 10 A. I'm sorry. What percentage 11 of the MTBE gasoline or total gasoline? 12 Q. Total gasoline. 13 A. No, I don't know that 14 percentage. 15 Q. With respect to the state 16 of California, have you ever heard it 17 referred to as being an island market 18 for gasoline distribution? 19 A. Yes, Yes. 20 Q. And can you explain to the 21 jury what it means for the state of 22 California to be an island market? 23 A. Well, basically it means 24 that the California distribution system</p>	<p>1 as to time. 2 A. Based on crude oil 3 capacity, I would say probably currently 4 Chevron. 5 Q. And Chevron, Standard Oil 6 Company California, has how many 7 refineries in the state of California 8 today? 9 MS. AMRON: Objection, 10 relevance. 11 A. I believe they have two. 12 Q. And historically during the 13 period from 1985 through 2003, how many 14 refineries did Chevron operate that 15 refined gasoline? 16 MS. AMRON: In California? 17 MR. STACK: In California. 18 A. You know, I would have to 19 go back and check. There's been a lot 20 of ownership changes in the refining 21 system in California over the years. So 22 I could not say definitively how many 23 year by year that Chevron operated. 24 Q. And based on your</p>

Page 130	Page 132
<p>1 experience in the industry, after 2 Chevron, what company was the number two 3 refiner of gasoline in the period 1985 4 to 2000 in California?</p> <p>5 A. I couldn't say. I couldn't 6 say. I have not looked at that. Yeah, 7 on a supply basis, it would be difficult 8 to estimate what that was.</p> <p>9 Q. Can you tell the jury how 10 many refineries Shell operates in 11 California?</p> <p>12 MS. AMRON: Objection, 13 relevance.</p> <p>14 A. I believe two at this 15 point.</p> <p>16 Q. Two at this point. They 17 previously operated three; am I correct?</p> <p>18 A. That's correct.</p> <p>19 Q. So they had a refinery 20 known as Shell Martinez in northern 21 California; am I correct?</p> <p>22 A. That's correct.</p> <p>23 Q. They have one in southern 24 California at what location?</p>	<p>1 A. I do not. 2 Q. With regard to BP Amoco, do 3 you know how many refineries BP Amoco 4 has operated in California in the period 5 1985 to 2003?</p> <p>6 A. No. Again, there is a lot 7 of shifting ownership there with the 8 acquisition of ARCO had facilities. BP 9 at this point, I think, is down to one 10 refinery in California.</p> <p>11 Q. And that location that you 12 are aware of is located where?</p> <p>13 A. It is in the LA basin area.</p> <p>14 Q. With regard to Exxon's 15 Benicia refinery based on your 16 experience, is there any evidence that 17 you can point us to that indicates that 18 Exxon refined gasoline in the period 19 1985 to 2000 was distributed to markets 20 in southern California?</p> <p>21 A. Just my general 22 knowledge that -- I'm sorry. This was 23 Benicia?</p> <p>24 Q. Correct.</p>
Page 131	Page 133
<p>1 A. It's in the LA area. 2 Q. And they also had one 3 historically in Bakersfield; am I 4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Conoco Phillips, they have 7 how many refineries operating in 8 California?</p> <p>9 MS. AMRON: Objection, 10 relevance.</p> <p>11 A. Two. One in the San 12 Francisco area and one in the LA area.</p> <p>13 Q. And historically do you 14 know how many refineries Conoco Phillips 15 and the companies which it purchased has 16 operated in California in the period 17 1985 to 2000?</p> <p>18 A. No. Again, ownership has 19 changed. I think I would have to go 20 back and compile that data.</p> <p>21 Q. With regard to Conoco 22 Phillips, do you know if it's the number 23 two refiner of products during the 24 period 1985 to 2003 in California?</p>	<p>1 A. General knowledge that the 2 Benicia refinery was connected into the 3 Kinder Morgan common carrier pipeline 4 system or its predecessors and that, you 5 know, I would expect that they would 6 have been distributing gasoline along 7 those systems.</p> <p>8 Q. And is it fair to say that 9 the northern California Kinder Morgan 10 system does not connect to any terminals 11 in the Los Angeles, Orange County, San 12 Diego area?</p> <p>13 A. That's correct. The 14 northern and the southern systems are 15 not connected.</p> <p>16 Q. Have you seen, in the 17 course of your work as a consultant in 18 this industry, any evidence to indicate 19 that there were shipments by barge or 20 tanker out of the Benicia refinery into 21 the Los Angeles basin?</p> <p>22 A. I know that there have been 23 limited shipments between San Francisco 24 and LA. I'm not sure that it's always</p>

Page 134	Page 136
1 been in one direction. But to be 2 specific, I don't know specifically if 3 Benicia has shipped to LA. 4 Q. With respect to your 5 knowledge of the industry, do you know 6 in what year Exxon announced a market 7 withdrawal under the Petroleum Marketing 8 Practices Act for marketing of gasoline 9 in southern California? 10 A. I do not. 11 Q. With regard to your 12 knowledge in the industry, do you know 13 if Exxon marketed gasoline in southern 14 California after 1993? 15 A. I'm sorry. If Exxon -- 16 Q. Yes. Or to rephrase it, do 17 you know if in 1993 Exxon terminated 18 operations in southern California under 19 the Petroleum Marketing Practices Act 20 and formally withdrew from distributing 21 Exxon product as Exxon? 22 A. No, I can't say that -- 23 Q. Do you know in what year 24 Mobil terminated its relationships with	1 A. No. I mean, historically 2 the general objective of refiners in the 3 States has been to maximize gasoline 4 production, but I cannot say 5 specifically what Mobil's objective was. 6 Q. With respect to Mobil, do 7 you know if they had any unbranded sales 8 of gasoline at racks at any of their 9 proprietary terminals in the period 1985 10 to 2000? 11 MS. AMRON: Objection, 12 beyond the scope of direct. 13 A. I do not. 14 Q. With regard to Mobil, do 15 you know whether or not their philosophy 16 and approach to producing gasoline was 17 to refine as much gasoline as was 18 necessary to meet demands of its branded 19 outlets? 20 A. I do not. 21 Q. With regard to the work 22 that you did to appear here today, did 23 you look at any materials other than the 24 Oil and Gas Journal annual surveys?
Page 135	Page 137
1 distributors and marketers in central 2 and northern California and withdrew 3 from the market under the Petroleum 4 Marketing Practices Act? 5 A. No. 6 Q. With respect to the 7 operations at the Mobil Torrance 8 refinery, in your experience did you 9 ever learn anything about Mobil's 10 natural business unit management 11 philosophy as it related to refining 12 product at Torrance and distributing 13 product from Torrance? 14 A. No, I'm not familiar with 15 that system. That's an internal Mobil 16 program? 17 Q. With respect to Mobil, do 18 you know what the Mobil refining 19 operations' objectives were in terms of 20 how much gasoline they would produce for 21 distribution from a refinery like the 22 Torrance refinery in California? 23 MS. AMRON: Objection, 24 vague.	1 A. Yes. The National 2 Petroleum News annual volumes for retail 3 sales. 4 Q. And what years did you look 5 at from the National Petroleum News for 6 annual volumes of retail sales? 7 A. Well, '85 to 2003. 8 Q. And did you keep copies of 9 the annual survey information you looked 10 at from the National Petroleum News for 11 the years 1985 to 2003? 12 A. We had actually -- we have 13 quite a number in our library which we 14 maintain. I believe for the older data, 15 and I can't tell you exactly which of 16 the oldest years, but back in the '80s I 17 ended up using an API, it is called a 18 basic data book, which references the 19 NP, National Petroleum News annual 20 reports. So, sorry, I misspoke. It was 21 not every year the annuals because 22 unfortunately we're not keeping all the 23 paper copies anymore. 24 Q. And with regard to the

35 (Pages 134 to 137)

Page 138	Page 140
<p>1 basic book maintained by API, do you 2 know what method was used to transfer 3 information from NP, National Petroleum 4 News, to the form you looked at?</p> <p>5 A. All I know is that they 6 reference the National Petroleum News as 7 the source. And there was some overlap 8 with the National Petroleum News volumes 9 that we do have and it checked out, so 10 it seemed like they were accurately 11 transferring the data.</p> <p>12 MR. STACK: Counsel, we 13 would request copies of whatever 14 National Petroleum News volumes the 15 witness may have reviewed for purposes 16 of giving testimony here today and 17 whatever volumes of the API basic 18 information that were referred to and 19 reviewed by the witness and testify -- 20 in preparing to testify here today. And 21 we request that those be provided to us 22 before any of the videotape be shown at 23 trial, if indeed the Court permits it.</p> <p>24 BY MR. STACK:</p>	<p>1 and, you know, I'm comfortable relying 2 on my general knowledge over the years 3 of the high position of Exxon Mobil in 4 terms of both capacity share and retail 5 share.</p> <p>6 MR. STACK: Move to strike 7 as nonresponsive.</p> <p>8 BY MR. STACK:</p> <p>9 Q. Specifically, Mr. Burke, 10 what years of the Oil and Gas Journal 11 did you look at in preparing to give 12 testimony here today, notwithstanding 13 the fact that you may have been told 14 that you shouldn't rely on that?</p> <p>15 A. Okay.</p> <p>16 MS. AMRON: I object to that 17 as asked and answered and as 18 mischaracterizing the witness' 19 testimony. He said he didn't rely on 20 that in testifying here today.</p> <p>21 BY MR. STACK:</p> <p>22 Q. Can you tell us which 23 years, Mr. Burke, you looked at?</p> <p>24 A. Yeah.</p>
<p>1 Q. Turning now to the Oil and 2 Gas Journal, what volumes of the Oil and 3 Gas Journal did you review to appear -- 4 prior to appearing here today?</p> <p>5 MS. AMRON: I'm sorry. 6 Vague and ambiguous. Are you asking 7 about what he reviewed to prepare for 8 today or just prior to showing up today?</p> <p>9 BY MR. STACK:</p> <p>10 Q. In preparing to give 11 testimony here today, sir, what Oil and 12 Gas Journals did you look at to assist 13 you in giving testimony?</p> <p>14 A. Well, I mean, it is kind of 15 a tricky question because I was told 16 fairly recently that I could not depend 17 on any analysis I have done to testify 18 today. So, you know, the tables which I 19 put together which are in Exhibit 8 20 confirmed my understanding of ranking 21 for Exxon Mobil and capacity and 22 retail. Now, I have tried, as I said, 23 since I was instructed not to use that 24 analysis, basically not to rely on that,</p>	<p>1 MS. AMRON: Object. Wait. 2 I'm going object to that as vague.</p> <p>3 THE WITNESS: Sorry. 4 I cannot tell you 5 specifically which years. I used every 6 year that we have, either physical or 7 electronic copies, of the annual Oil and 8 Gas Journal issue, which generally comes 9 out in December of each year as the 10 basis for the table.</p> <p>11 For the older data where we 12 did not have the detailed information, 13 again, that source was out of the API 14 Basic Data Book, I believe is the name 15 of it.</p> <p>16 MR. STACK: With regard to 17 the Oil and Gas Journals that may have 18 been reviewed by the witness or the API 19 basic information book that was referred 20 to, we would request copies of those and 21 request that they be produced prior to 22 the Court permitting the plaintiff to 23 show any of the videotape we've prepared 24 today.</p>
	36 (Pages 138 to 141)

Page 142	Page 144
<p>1 BY MR. STACK:</p> <p>2 Q. Other than the National 3 Petroleum News and the API basic book 4 and the Oil and Gas Journal, were there 5 any other materials that you reviewed to 6 prepare to give testimony here today?</p> <p>7 MS. AMRON: I'm going to 8 object to that as mischaracterizing the 9 witness' testimony about what he 10 reviewed in preparing for giving 11 testimony today.</p> <p>12 A. Based on the fact that I'm 13 relying on my industry knowledge to 14 respond to the various questions, those 15 two are the sources that I had used to 16 prepare these tables in Exhibit 8. I'm 17 not sure if that exactly answers your 18 question.</p> <p>19 Q. Well, in preparing 20 Exhibit No. 8, other than the National 21 Petroleum News database and/or the Oil 22 and Gas Journal or the API basic 23 database, were there any other materials 24 that you relied upon to prepare any of</p>	<p>1 dispute between the parties. 2 A. Yeah. I did not prepare 3 this document, first off. 4 But those three sources are 5 the sources used to prepare the tables. 6 Q. If I can direct your 7 attention to Exhibit No. 1, the graphic 8 that says "ExxonMobil Refineries - 1985- 9 2003" -- 10 MS. AMRON: That's actually 11 Exhibit No. 2, Bill. 12 MR. STACK: Pardon me, 13 Exhibit No. 2, correct. It is the 14 notice. 15 BY MR. STACK: 16 Q. Exhibit No. 2, did you 17 prepare Exhibit No. 2, Mr. Burke? 18 A. No. 19 Q. With respect to 20 Exhibit No. 3, the "Kinder Morgan 21 Pipeline System, Northern California," 22 did you prepare that exhibit? 23 A. No. 24 Q. With respect to the</p>
<p>1 the tables or other information -- 2 (Interruption by 3 teleconference operator.) 4 MR. STACK: I think we're 5 there. Pardon the interruption. 6 BY MR. STACK: 7 Q. The question that I was 8 getting ready to pose to you was, in 9 preparing the tables and other 10 information you conveyed to counsel for 11 preparation of Exhibit No. 8, the 12 proposed stipulations, apart from the 13 National Petroleum News and the Oil and 14 Gas Journal and the API basic 15 information source book, what other data 16 did you look at or review to assist in 17 preparing Exhibit No. 8?</p> <p>18 MS. AMRON: I'm going to 19 object to that, excuse me, on the 20 grounds of relevance and on the grounds 21 that it is inappropriate to use 22 Exhibit No. 8 in this deposition as it 23 was a document prepared by counsel for 24 counsel in an effort to resolve a</p>	<p>1 Exhibit No. 4, "Kinder Morgan Pipeline 2 System, Southern California," did you 3 prepare that exhibit? 4 A. I did not. 5 Q. Did you download 6 Exhibit No. 3 from the Kinder Morgan 7 pipeline system Web site? 8 A. I have downloaded it. You 9 are talking about specific for this 10 exhibit? 11 Q. Yes. 12 A. No, I did not. 13 Q. And so the question is 14 clear, with respect to the preparation 15 of Exhibit No. 3, did you specifically 16 undertake to prepare it by downloading a 17 map from the Kinder Morgan pipeline 18 system Web site? 19 A. I did not. 20 Q. With regard to 21 Exhibit No. 4 and its preparation, did 22 you download a map from the Kinder 23 Morgan pipeline system to prepare that 24 exhibit?</p>

Page 146	Page 148
<p>1 A. I did not.</p> <p>2 MR. STACK: I have no</p> <p>3 further questions at this time.</p> <p>4 MR. CAMPINS: This is</p> <p>5 Mr. Campins. I just want to make sure</p> <p>6 the record is clear here, Bill. If you</p> <p>7 have any questions that you asked that</p> <p>8 we directed the witness not to answer</p> <p>9 and you would like to reask those now,</p> <p>10 reask them and we'll make our</p> <p>11 objections. But because the witness is</p> <p>12 going to be out of the United States, we</p> <p>13 want to make sure you have a full</p> <p>14 opportunity to ask those questions. So</p> <p>15 go ahead, go forward.</p> <p>16 MR. STACK: Under the</p> <p>17 circumstances I think I made my record.</p> <p>18 I cannot at this point in time recall</p> <p>19 those questions which may have been</p> <p>20 asked and to which counsel posed an</p> <p>21 objection and directed the witness not</p> <p>22 to answer.</p> <p>23 I would prefer to conclude</p> <p>24 now and take up those issues later with</p>	<p>1 MR. STACK: Fine. If you</p> <p>2 put it that way, then I will ask the</p> <p>3 court reporter to find the instances</p> <p>4 where you have directed the witness not</p> <p>5 to answer and we will revisit every one</p> <p>6 of those. Take a moment to go off the</p> <p>7 record.</p> <p>8 Ann, if you would be so kind</p> <p>9 and accommodate us. Let's identify</p> <p>10 them, read them off the record and then</p> <p>11 read them on the record.</p> <p>12 THE VIDEOGRAPHER: We're</p> <p>13 going off the record. The time is</p> <p>14 4:58 p.m.</p> <p>15 (Recess.)</p> <p>16 THE VIDEOGRAPHER: We're</p> <p>17 back on the record. The time is</p> <p>18 5:02 p.m.</p> <p>19 BY MR. STACK:</p> <p>20 Q. Mr. Burke, in an attempt to</p> <p>21 try to do this as succinctly as</p> <p>22 possible, I'm going to ask you a series</p> <p>23 of questions relative to the work that</p> <p>24 you performed in advance of this</p>
Page 147	Page 149
<p>1 the Court.</p> <p>2 MR. CAMPINS: Well, Bill,</p> <p>3 this is Nick again. Why don't we ask</p> <p>4 the court reporter to find those places</p> <p>5 and have her reread each question then</p> <p>6 if you're going to make an issue of this</p> <p>7 with the Court.</p> <p>8 MR. STACK: I may make an</p> <p>9 issue of it with the Court; I may not.</p> <p>10 I don't know that it would be</p> <p>11 particularly profitable to have each of</p> <p>12 those questions reread. It appears to</p> <p>13 be rather laborious and time-consuming.</p> <p>14 You've made your record. I've made</p> <p>15 mine. And I think we can conclude</p> <p>16 and/or you can go forward and ask the</p> <p>17 witness questions yourself.</p> <p>18 MS. AMRON: I think there</p> <p>19 were only two or three questions. It is</p> <p>20 not a lot of questions. If you don't</p> <p>21 want to ask the court reporter to do</p> <p>22 that, then -- you know, you have the</p> <p>23 opportunity to do it and if you don't</p> <p>24 want to take it, that's okay.</p>	<p>1 deposition and also the sessions that</p> <p>2 you may have spent with counsel.</p> <p>3 Counsel may have to, in</p> <p>4 order to preserve the record, object.</p> <p>5 We will try to do it as quickly as</p> <p>6 possible.</p> <p>7 In advance of appearing</p> <p>8 here to testify, did you meet with</p> <p>9 counsel to discuss the nature of your</p> <p>10 testimony in these proceedings?</p> <p>11 A. I did.</p> <p>12 Q. And when did you meet with</p> <p>13 counsel?</p> <p>14 A. Immediately before coming</p> <p>15 over to the deposition.</p> <p>16 Q. And that would be sometime</p> <p>17 this morning, the morning of Saturday,</p> <p>18 October 10?</p> <p>19 A. That's correct.</p> <p>20 Q. And how long did that</p> <p>21 meeting take place with counsel?</p> <p>22 A. Probably started 10:30 --</p> <p>23 I'm looking for a little guidance here.</p> <p>24 10:30.</p>

Page 150	Page 152
<p>1 THE WITNESS: I'm not sure 2 when you left, Susan. 3 10:30 to probably 12:30. 4 BY MR. STACK: 5 Q. And in the course of that 6 meeting, you were in the company of 7 Ms. Amron and Mr. Campins; am I correct? 8 A. That's correct. 9 Q. And where did the meeting 10 take place this morning? 11 THE WITNESS: You guys know 12 the address. It's -- 13 A few blocks from here. I 14 will need some help on the address, to 15 tell you the truth. 16 MS. AMRON: 15 Park Row. 17 THE WITNESS: There you go. 18 BY MR. STACK: 19 Q. Prior to meeting this morning, had 20 you had conversations with counsel 21 relative to providing them with 22 information for the proposed 23 stipulation, Exhibit No. 8? 24 MS. AMRON: I'm going to</p>	<p>1 Q. How many times did you 2 speak to counsel relative to information 3 to be provided to them for inclusion in 4 Exhibit No. 8? 5 MS. AMRON: Objection to 6 relevance and standing objection to the 7 document. 8 A. Probably two or three 9 times. 10 Q. When were you first 11 contacted to provide information to 12 counsel for inclusion in Exhibit No. 8? 13 MS. AMRON: Objection as to 14 relevance. Same objection as to the 15 questions about that document. I 16 believe it mischaracterizes the witness' 17 testimony. 18 A. Probably three weeks ago, 19 something like that. 20 Q. And in the three-week 21 period, did you work with your 22 colleagues to develop a list profiling 23 Exxon Mobil's refining capacity 1985 to 24 2003?</p>
Page 151	Page 153
<p>1 object to that question on the grounds 2 that the stipulation is an inappropriate 3 topic for this deposition for all the 4 reasons I stated already. 5 You may answer. 6 MR. STACK: Are you 7 permitting the witness to answer, Susan. 8 MS. AMRON: Yes. In fact I 9 just very quietly told him he may 10 answer. 11 MR. STACK: Okay. 12 THE WITNESS: Yes, I had 13 phone conversations. 14 BY MR. STACK: 15 Q. And apart from phone 16 conversations, did you have any face-to- 17 face meetings with counsel relative to 18 information that was requested of you 19 for inclusion in Exhibit No. 8? 20 MS. AMRON: Again, object on 21 the grounds of relevance and also to 22 the -- standing objection to the 23 questioning about that document. 24 A. No, I did not.</p>	<p>1 MS. AMRON: Objection as to 2 relevance and to the use of Exhibit 8 or 3 questions about Exhibit 8. 4 A. Yes, I did. 5 Q. Who else did you work with? 6 MS. AMRON: Same objection. 7 A. I had an analyst, Michelle 8 Gutierrez, work on it. 9 Q. And with regard to the 10 information pertaining to Exxon Mobil 11 market share and ranking for market 12 share and sales of gasoline, did you 13 have anyone assist you in pulling that 14 information today? 15 MS. AMRON: Objection as to 16 relevance and to the use of the 17 questions about Exhibit 8. 18 A. The answer is yes, and it 19 was, again, Michelle Gutierrez. 20 Q. Approximately how much time 21 did you spend in assembling information 22 relative to profiling Exxon Mobil's rank 23 and refining capacity and Exxon Mobil's 24 rank and market share in the United</p>